27th CONGRESS, 2d Session. Rep. No. 943. Ho. OF REPS.

VALIDITY OF TARIFF LAWS.

[To accompany bill H. R. No. 547.]

JULY 23, 1842.
Ordered to be printed.

Mr. BARNARD, from the Committee on the Judiciary, made the following

REPORT:

The Committee on the Judiciary, to whom was referred the letter of the Secretary of the Treasury of July 7, 1842, with the accompanying papers, in obedience and reply to a resolution of the House of Representatives of the 30th of June last, submit to the House the following report:

It appears from the Secretary's letter, that his attention had been some time since directed to the provisions of the act of the 2d of March, 1833—the act commonly called the compromise act—with a view to the operations of the Treasury after the final reduction of the duties should have taken place under it; and that, upon a careful perusal of the act, and consideration of its scope and policy, he had been inclined to the opinion that, unless Congress should interpose in the mean time, it would be impossible to collect duties after the 30th of June. It also, appears from his letter, that on the near approach of the period when, in the absence of further legislation, the duties on imports, if accruing at all, must be assessed upon their value at the place of entry, the attention of the Secretary was again called to the subject, and he referred the matter to the Attorney General for his opinion. The Attorney General gave his opinion on the subject, at length, in a letter to the Secretary of the 23d of June; and, also, in another letter to the Secretary of the 24th of June, upon a further request and suggestion of the Secretary. "The deliberate judgment of the proper law officer of the Government," says the Secretary, "formed after extended research and mature consideration, having been decidedly expressed, it was believed to be the duty of the Department, in a case of acknowledged difficulty, to conform to it, and shape its course accordingly." He proceeded, therefore, to cause circulars to be issued for the collection of duties. Three were issued—the first dated the 23d of June, the next the 25th of June, and the last the 1st of July. Copies of the Secretary's letter to the House, of the two opinions of the Attorney General, and of the three circulars to collectors, are annexed to this report, for the convenience of easy reference.

It will be seen, by referring to the circulars to collectors, when taken all together, that it is assumed by the Department of the Treasury, 1st, that, without any further legislation in the case, duties on imports are imposed by existing laws from and after the 30th of June, 1842; 2d, that the rate of duties thus imposed, and to be collected, by existing laws, from and

after the 30th of June, 1842, is twenty per cent. *ad valorem* on the value of *all* goods, wares, and merchandise imported, with *certain exceptions* particularly referred to in the circular of the 1st of July; and, 3d, that the Secretary of the Treasury has the legal right to prescribe regulations under which the value of the imports, which is to be the value at the port of entry, shall be determined or estimated, and on which value the rate of twenty per cent. for duties is to be assessed. All this is *assumed* in the circulars, doubtless on the strength of the able and ingenious opinions of the Attorney General, to which the Secretary submits his own unsatisfied judgment; and he proceeds, through the Comptroller, to give directions to the proper officers for the collection of the duties accordingly. These directions are, 1st, that duties on all imports (with exceptions sufficiently indicated) shall be collected at the rate of twenty per cent. on their value at the port of entry; and, 2d, that the value of these imports at the port of entry shall be determined, in all cases, by the appraisers, according to particular regulations, specifically prescribed and laid down in the circulars. These regulations will be referred to hereafter in this report. These directions, it is manifest, have all their authority in the correctness of the positions assumed by the Department, under the opinions and advice of the Attorney General, in relation to the actual state of the laws concerning duties on imports. If those positions are untenable and untrue, if existing laws do not in fact impose duties on imports from and after the 30th of June, 1842; or, duties being imposed generally, if they do not impose twenty per cent., or any other *specified rate* per cent. of duties, from and after that day, on whatever valuation; or, duties being imposed, and the rate per cent. specified, if the valuation on which the rate is to be assessed is uncertain, and incapable of being rendered certain without further legislation, then it follows that these directions for the collection of duties, and all proceedings under them, are wholly without warrant of law, are utterly void, a trespass by a high hand on private property and rights, and bring the officers of Government and the citizens, in large masses, into conflict and collision. The Government is left without a revenue, except as it is extorted from unwilling and resisting hands, by lawless force. Is this really the condition of the country? Have existing laws for raising and collecting revenue been suffered to expire, or become inoperative, and no laws enacted to take their place? And is the Executive Government now proceeding to force collections of revenue from our citizens without the sanction or authority of law? If this be so, a fearful responsibility rests somewhere; and that it is so, there is too much reason to apprehend and believe. At the best, the legal obligations in the case and the authority of the Government are disputed and doubtful. The head of the proper Department, charged with collections, has entertained, and for aught that appears still entertains, an opinion adverse to the right and authority which he is proceeding to employ and enforce; and the law officer of the Government, by whose views the Department submits to be governed, himself concludes his final argument and opinion with the declaration, forced from him "after extended research and mature consideration," that he is "far from affirming that the *whole case* is entirely free from difficulties." With this opinion of the Attorney General before the President, ending with the intimation of a donbt concerning the correctness of his own conclusions, and with the fact also before him that the head of the Treasury Department entertained, not doubts merely, but a different and adverse opinion,

it is certainly deeply to be regretted, that he could not have permitted the bill passed by Congress, and presented to him on the 25th of June last, expressly for the purpose of meeting the exigencies of the case, by continuing in force, for a limited period, the impost and collection laws then in existence to become a law. And the more deeply is this act to be regretted, since, as your committee now believe, after the fullest consideration which the brief time they have had has enabled them to bestow on the subject, no duties whatever are collectable under any existing law, or have been since the 30th of June.

The committee will now proceed to set forth, with studied plainness and brevity, the grounds of the conclusion to which they have come in regard to the existing state of the laws concerning duties on imports.

In considering the question, whether duties on imports are collectable under any existing law, our attention is at once directed to the act of March 2, 1833—the "compromise act." On its interpretation and construction the whole question turns. This was an act which, read by its title, was designed "to *modify* the act of the 14th of July, 1832, and all other acts imposing duties on imports." It is in this *modifying* feature and character of the act, considered in connexion with the *political purpose* of compromise and composition which it was its well-known object to effect, that we shall find its true design and operation.

The *general* question to be determined is, whether it was the intent of the act of March 2, 1833, that new legislation should take place before any duties should be collected, from and after the 30th of June, 1842, or whether such are the plain and inevitable purport and effect of its terms and provisions? That such was the intent, and, at any rate, that such is the necessary effect of its provisions, we think is, unhappily, only too manifest. By no fair reading of its terms have we been able to bring our minds to any other conclusion; and when we look into its history, as we may by the well-settled canons of interpretation, to aid us in discovering its true scope and design, this conclusion only becomes the more clear and indisputable.

The point to be *particularly* considered is, what was the design and what are the purport and effect of this compromise act, in regard to duties on imports *"from and after the 30th of June, 1842?"* As an act *modifying* previous acts, and affecting, by a gradual reduction, the rate of duties down *to* the 30th of June, no doubt whatever arises. The first section performs the reducing process. It *imposes* no duties whatever; but, seizing the excess above 20 per cent *ad valorem*, of duties imposed by previous acts, it cuts off that excess by tenths through a series of years, commencing on the 31st of December, 1833, and completing the operation on the 30th of June, 1842. If the act ended here, no doubt could be entertained that duties imposed by previous acts would be subsisting and collectable, "from and after the 30th of June," at the rate of 20 per cent. *ad valorem*. Nothing would have been done but to lop off the excess. But the act looked to further modifications, to take effect "from and after the 30th of June," to which we will shortly advert.

Other modifications, however, of previous acts, having their effect immediately, or in the period between the 31st of December, 1833, and the 30th of June, 1842, are noticeable in this act. Thus the 2d section raises the duty immediately on "plains, kerseys, or Kendal cottons," from five per cent. ad valorem, at which they stood by a previous act, to 50 per

cent.; and then subjects the excess above 20 per cent. to the same process of reduction prescribed in the first section. And thus, also, the 3d section of the act, to the list of articles exempt from duty by previous acts, adds other articles by enumeration, and declares they shall be admitted free of duty "from and after the 31st of December, 1833, and *until* the 30th of June, 1842."

These are all the provisions of this act actually modifying previous acts, where the modifications are to take and have their effect *in the period between the passing of the act, or between the 31st of December*, 1833, *and the 30th of June*, 1842. There is, however, a *proviso* to the 6th section, by which other legislation *may* take place, *to operate within the period just named*—1st, for detecting and punishing evasions of the revenue laws; and, 2d, for adjusting the duties on articles paying less than 20 per cent. by previous acts, to meet the contingency either of excess or deficiency of revenue, but not so as to exceed the rate of 20 per cent.

We repeat, that we have now referred to all the provisions of this act by which previous acts are modified in their effect and operation, *previous and down to the 30th June*, 1842. The only modifications which need be particularly noticed are, 1st, that by which duties under previous acts undergo a graduated reduction between the 31st of December, 1833, and the 30th of June, 1842, coming down to 20 per cent. by the latter day; and, 2d, that by which certain articles paying duties under previous acts are admitted free of duty, from and after the 31st of December, 1833, and *until* the 30th of June, 1842. The object of these modifications cannot be mistaken. The first thing to be accomplished was, to reduce the duties to a revenue standard, which they were supposed to have greatly exceeded. This was to be done on the *protected* articles, by a graduated scale of reduction, running through nine years, to give time to the manufacturers to adapt themselves to the new order of things; and in the mean time additions were made to the free list, to prevent the evils of a redundant revenue while the process of reduction was going on.

This object being provided for, by those provisions which were to have their effect and operation *previous and down to the 30th of June*, 1842, the next thing was to settle the terms of the compromise or composition, as far as might be, for the period "*from and after the 30th of June*, 1842;" and to this object all the other provisions of the act expressly address themselves. An examination of these provisions will show that the design was not to legislate at that time for the imposition and collection of duties "from and after the 30th June, 1842," but to settle the *general principles, terms, and conditions*, on which future legislation should take place; or, as a Senator in debate (Mr. Holmes) expressed it at the time, to provide "the basis of a treaty, to be carried into effect at the end of ten years."

The terms of composition which this act attempted to settle, to take effect *from and after the 30th June*, 1842, were chiefly these:

1st. That so much revenue should be raised by duties, and only so much, as should be then found necessary for an economical support of the Government; and this must be done within a maximum of 20 per cent. ad valorem.

2d. That duties should be paid in cash, and no credits allowed.

3d. That duties on imports should be assessed on their value at the port of entry, instead of their value at the ports whence imported; and

4th. That certain articles, given by enumeration, chiefly used in manufactures, should be free of duty.

These were the *terms of composition*, between those who favored and those who opposed a protective tariff, made in the act of 1833, but expressly *to take effect only from and after the 30th June*, 1842. They were, on the face of them, terms of compromise and composition, principles and conditions; not to go into effect and operation as the law of the land, by virtue of this act, *proprio vigore*—at least the most important of them were not—but *to be carried* into effect by proper laws, passed in proper time, for the purpose. This is too apparent on the face of the act to admit of doubt.

Having *modified* existing laws, as affecting duties *previous and down to the 30th of June*, 1842, and having provided, in terms, that "*until* the 30th of June, 1842, the duties imposed by existing laws, *as modified by this act*, shall remain and continue to be collected," the act then goes on to declare the terms, principles, and conditions, upon which duties shall be collected "*from and after* the day last aforesaid;" and, also, that the necessary provisions for collecting duties, upon these terms, principles, and conditions, *shall be prescribed by law*.

Thus in the 3d section: "And, from and after the day last aforesaid, all duties upon imports shall be collected in ready money, &c.; and such duties *shall be laid* for the purpose of raising such revenue as may be necessary to an economical administration of the Government; and the duties required to be paid on goods, &c., shall be assessed upon the value thereof at the port where the same shall be entered, under such regulations *as may be prescribed by law*."

And then in the 5th section: "From and after the said 30th of June, 1842, the following articles shall be admitted to entry free from duty, to wit," &c. [enumerating them;] "and all imports, &c., [including every thing but the free list just named,] from and after that day, *may be admitted to entry*, subject to *such* duty, not exceeding twenty per centum ad valorem, *as shall be provided for by law*."

Nobody, it seems to us, can read these provisions of the act without understanding them as an explicit declaration, that, "from and after the 30th of June, 1842," duties should be imposed, the rate per cent. established, and the valuation made, according to laws afterwards and in due time to be passed; that it was not intended that duties should be collected *after* that day, under the *modified* act of 1832, or any other act existing previous to the act of 1833, because this act expressly declares that those acts shall operate *until* that day; leaving it to be certainly inferred that, after that day, other legislation would be required. For, though it be perfectly true, as a general principle, as stated by the Attorney General, that "if a statute, before perpetual, be continued by an affirmative statute for a limited time, this does not amount to a repeal of the former at that time;" yet it is believed that, in this case, the rule of law is different. Here the statute, which was before perpetual, (viz: e. g. the act of 1832,) was first materially *modified* by the subsequent statute, (the act we are considering, that of 1833,) and then continued *as modified* for a limited time. The act of 1832, *as modified*, was a new statute, and, *as such*, was not perpetual, unless made or left so by the modifying act. If the modifying act declared that the modified statute should be perpetual, or, what amounts to the same thing in all statutes, had left it to stand without any declared

limit of time, then it would have been perpetual. But this is far from the fact. The act, as we have said, was modified, made a new statute, and then, as such modified or new statute, was expressly limited in duration. It was a limitation prescribed in the body of the statute itself; for the two acts must be read together, *in pari materia;* or, rather, the first must be read with the new matter of the second incorporated in it, and read as one and a new act. As such modified and new act, beginning to operate by its own terms "*from* and *after* the 31st of December, 1833," it was to continue to operate, also by its own terms, "*until* the 30th of June, 1842." This was an express limitation, and no statute ever had a clearer one. The act of 1832 was perpetual by its own terms; and an act passed in 1833, declaring merely that that previous statute should be the law of the land for nine years, would not repeal it at the end of the nine years without other words to show the intention. The original and inherent quality of perpetuity would remain. All this is perfectly true. But, in the present case, the act of 1832 is no longer the same; it is changed by the addition or substitution of new and important matter; under it, duties are levied by a new and different and varying rate per cent.; it is, in fact, a new statute, laying duties on imports, and, as such, is limited to be in force "*until* the 30th of June, 1842." We hold it to be clear that "the act of the 14th of July, 1832, and all other acts imposing duties on imports," as *modified*, cease to be of force after the 30th of June, 1842; and that, if they exist at all in force after that day, as perpetual acts, they must so exist without the modifications of the act of 1833—a position which will hardly be maintained by any body.

This express limitation of the modified acts imposing duties on imports, so clear in itself, is followed up by the various provisions in the 3d and 5th sections of the act of 1833, already referred to, looking expressly to future legislation, and concluding with the enactment, in the 5th section, that, from and after the 30th of June, 1842, imports "may be admitted to entry subject to such duty, not exceeding 20 per cent. ad valorem, *as shall be provided for by law.*"

It may be well enough observed here, that the 4th section of the act is itself a striking proof that new legislation was intended and deemed indispensable for the collection of duties "from and after the 30th of June, 1842." That section makes linens and some other articles, then subject to duty, free of duty, but only "from and after the 31st of December, 1833, and *until* the 30th of June, 1842, leaving the case of these articles to be decided on, whether they should be free or subject to duty, when the new tariff, for the period following the 30th of June, 1842, should come to be settled. If this was not the intention what was to become of these articles? Would they be free *after* the 30th of June, 1842, though the act declared they should only be free *until* that day? Would they not rather, if no further legislation touched them, return again, from and after that day, under the duty which they bore before the passing of this act, whatever that duty was?

While, however, we think it clear, from almost every passage of the act, that new legislation was expected and intended for the imposition and collection of duties "from and after the 30th of June, 1842," the question still recurs, whether, notwithstanding that general purpose, existing laws were not left, after all, with provisions and vitality enough remaining, to constitute a body of actual subsisting legislation sufficient for the purpose? That further legislation was intended to carry out the terms of composition

in the compromise act, is indisputable; but was, or is, such legislation indispensable to the collection of duties?

We have already referred to the express *limitation* imposed by this act on the *previous acts as modified*, and also to the terms of the 5th section, that, after the 30th of June, imports should be admitted at such rate, not exceeding 20 per cent., as should be prescribed by law. We will now state explicitly that, in our opinion, no rate per cent. of duty whatever, upon any valuation whatever, is prescribed, by existing laws, operating after the 30th of June.

The clause referred to, in the 5th section of the act, that "imports may be admitted to entry," &c., was not intended, as we think, either to give authority to Congress to legislate on the subject, or to command Congress to legislate, or to admonish Congress of the necessity of legislating. The object was simply to *fix the maximum of duties*, as one of the terms of composition, as far as this act could do it, within which Congress was to confine itself when it should come to impose duties to be collected after the 30th of June. "All imports * * * from and after that day, [the 30th of June, 1842,] may be admitted to entry subject to such duty, *not exceeding twenty per centum ad valorem*, as shall be provided for by law." Congress must and would legislate on the subject as a matter of course; but, if it would obey the compromise, it must not lay duties beyond 20 per cent. Congress must legislate, because, by express limitation, all the modified acts imposing duties would cease to operate on the 30th of June; and there was nothing in this act, in any clause or syllable of it, which prescribed what duties should be imposed or collected after that day. Twenty per cent., certainly, was not the rate, rather than any other; for although existing acts, as modified, at once imposed and reduced duties, so that, on the 30th of June, they would stand at 20 per cent. if they stood at any thing; yet, on that very day, these "acts, as modified," ceased to be of authority for the collection of duties; it was declared that, *under them*, duties should only be collected "*until* the 30th of June, 1842." The act of 1833, in the mean time, settled no rate of duties whatever to be paid after the 30th of June, and did nothing on that subject except to prescribe a maximum which was not to be exceeded.

How strange soever it may seem to us now, with the wants of the Treasury pressing upon us as they do at this time, yet it cannot be doubted that it did enter into the terms of the compromise in 1833, that duties on imports, after June, 1842, should not exceed 20 per cent. ad valorem. With the home valuations, the parties respectively undoubtedly flattered themselves that duties not exceeding 20 per cent. would yield as much revenue as would be necessary for an economical administration of the Government, and at the same time afford protection, in some sort, to manufacturers. At any rate, such was this item in the compromise.

We have thus far endeavored to construe this statute by itself and its own terms. By turning now, for a moment, to its history, we shall find the strongest confirmation of the views we have taken of it, particularly those just insisted on: 1st, that an *effective limitation* was intended to be given, and was given, to previous "acts, as modified" by this act, so that no duties could be collected *under them* after the 30th of June, 1842; and, 2d, that the present act imposed no duties, and, certainly, that it fixed no rate per cent. of duties to be collected after that day.

This act underwent a remarkable change of features from what it was

as originally introduced, in the particulars just referred to. In the 3d section, after the clause limiting the operation of the modified acts to the 30th of June, 1842, (or the 30th of September as it stood at first,) and the clauses requiring cash payment of duties, &c., there came the following: "And, until otherwise directed by law, from and after [the day before named] such duties shall be at the rate of 20 per cent. ad valorem."

This, it will be perceived at once, was a pregnant provision, and the reason of its insertion was fully explained by the mover of the bill, (Mr. Clay.) We will quote his language, only remarking, before doing so, that in the original bill there was no such clause as is now found in the 5th section, limiting the duties to be collected after the 30th of June, 1842, to a maximum of twenty per cent., or to any other maximum whatever. In the report of Mr. Clay's speech, introducing this bill into the Senate, is the following paragraph:

"Having next read through the third section of the bill, Mr. Clay said that, after the expiration of a term of years, this section laid down a rule by which the duties were to be reduced to the revenue standard, &c. Until otherwise directed, and in default of provision being made for the wants of the Government in 1842, a rule was thus provided for the rate of duties thereafter; Congress being, in the mean time, authorized to adopt any other rule which the exigencies of the country or its financial condition might require. That is to say, if, instead of the duty of 20 per cent. proposed, 15 or 17 per cent. of duty was sufficient, or 25 per cent. should be found necessary to produce a revenue, &c., there was nothing to prevent either of these rates, or any other, from being fixed upon, *whilst the rate of 20 per cent. was introduced to guard against any failure on the part of Congress to make the requisite provision in due season.*" (Congressional Debates, vol. ix, part 1st., page 464.)

The clause to which this language referred was that above quoted from the 3d section, which, in terms, *imposed duties on imports, in 1842, at the rate of 20 per cent., until otherwise directed by law.* This, Mr. Clay says, was "to guard against any failure on the part of Congress to make the requisite provision in due season." The first clause limited "existing laws, as modified," and the collection of duties under them, to the 30th of June, 1842, and must have been so understood at the time. It was intended that the proper rate of duties for raising "such revenue as should be necessary for an economical administration of the Government," from and after the distant period of 1842, should be ascertained and prescribed by future legislation, nearer the time when it should be required; but in the mean time, and solely "to guard against any failure on the part of Congress to make the requisite provision in due season," the clause in the 3d section imposing a *provisional* duty of 20 per cent. was inserted.

Now, this clause was proposed to be stricken out by the select committee to whom the bill was referred, and was stricken out by the Senate. A new clause, however, was proposed by the committee at the same time, and was adopted by the Senate, evidently as a substitute for the other. This is the clause now found in the 5th section of the act, namely: that "all imports, &c., from and after [the 30th of June, 1842] may be admitted to entry subject to such duty, not exceeding twenty per centum ad valorem, as shall be provided for by law."

It is evident that, in the progress of the bill, the terms of the compromise

were changed. The opponents of a protective tariff were unwilling to leave it open to that future Congress which should arrange the duties to be collected after June, 1842, to take a free range above as well as below 20 per cent., restrained only by the general and somewhat indefinite direction, that the duties should be laid for revenue, and for so much only as should be required for an economical Government. They were even unwilling that the duties for 1842 should then be fixed, though provisionally, and only to guard against the possible failure of Congress to legislate in due season, as high as 20 per cent. They preferred, in short, to leave the whole subject of laying and fixing the rate per cent. of duties for 1842 to a future Congress, under the restriction, so far as they could impose it, in addition to that requiring the duties to be laid only for necessary revenue, that they should in no case exceed the maximum of 20 per cent.

Upon the exposition now made, it seems to us an unavoidable and incontrovertible conclusion, 1st, that, since the 30th of June, 1842, no duties whatever are collectable by virtue of any act existing previous to the act of March 2d, 1833, modified, as all previous impost acts were, by that act; and 2d, that no duties whatever are collectable, since the 30th June, 1842, by virtue of the act of March 2d, 1833, as that act imposed no duties, and certainly fixed no rate per cent. of duties to be collected after that day.

The view already presented in this report might seem to be sufficient for all practical purposes, as touching the present state of the law in regard to duties upon imports. But the question is one of so much magnitude, considering the condition into which the country has been thrown, if the conclusions we have already reached are really sound, that we are unwilling to omit any thing, while we have the subject in hand, which may be deemed important to the correct and just understanding of the whole case. We proceed, therefore, to present the subject in another view.

We suppose, upon a faithful study of the question, that that provision of the compromise act which requires that assessments shall be made, from and after the 30th June, 1842, on the value of imports, "at the port where the same shall be entered, under such regulations as may be prescribed by law," is an insuperable bar to the collection of any duties whatever, under existing statutes, so long as the required regulations have not been prescribed by law.

If it were admitted that the act of 1832, modified by the act of 1833, remains in force as an act imposing duties on imports, notwithstanding the limitation already referred to; that by that act, as modified, duties were only reduced to 20 per cent. ad valorem, to which point they came, and at which point they stood, on the 30th of June, and where they now stand; yet we are unable to perceive how duties, at the rate of 20 per cent., or any other rate, can be collected, so long as the valuations of the imports on which that rate per cent. is to be assessed are not only uncertain, but are incapable, from any thing found in the law, of being rendered certain.

By the act of 1833, a new rule of valuations was to be introduced in 1842, widely varying from the old one, and wholly inconsistent with it; and this matter of a rule of valuations lies at the foundation of ad valorem duties. By the old rule, the value of imports was to be taken as "at the time purchased, and the place from which the same were imported;" by the new rule, the value is to be taken "at the port where the same shall be entered." The one is commonly called the foreign valuation, and the other the home valuation; and whether the one or the other shall

be taken, is matter of substance, affecting, in an eminent degree, the rate or amount of duties to be assessed on all imports. It has been often estimated and held, that 20 per cent on the home valuation would yield duties from 3 to 6, or even 10 per cent. greater in amount than 20 per cent. on the foreign valuation; the excess would depend altogether on the mode of ascertaining the home value.

Indeed, as is well known, this rule was introduced into the act of 1833 expressly with a view to raise the sum of the duties, and thus aid in giving protection to manufactures. It was not in the bill as it was originally introduced into the Senate; it was inserted as an amendment offered by Mr. Clay, after the amendments which we have before referred to had been adopted by the Senate, and among them that which fixed the maximum of duties after June, 1842, at 20 per cent.

One thing, then, on this part of the case, we consider as ascertained and certain—that the rule of home valuations is a totally different thing from the rule of foreign valuations, and that the two do not consist with each other; that if a rate per cent. of duties, whatever it be, on home valuations, be prescribed by law, they must be so assessed; and if any immovable impediment stands in the way of their being so assessed, it is not easy to see how they are to be assessed at all. A rate per cent. is not a fixed or certain quantity, unless the quantity on which it is to be rated is fixed and certain, and it varies as the latter varies.

Now, there is nothing fixed or certain in regard to the quantity or sum on which a given rate of duties may be required to be assessed, on the face of the naked rule that the assessment shall be made on the value of imports "at the port where the same shall be entered." The question arises, how shall that value be ascertained? Who shall ascertain it? What shall be the elements which shall enter into the value? And it is seen at once, that "regulations" become indispensable for ascertaining the value. And these "regulations" themselves are matter of substance, and can only be prescribed by competent authority. According as these "regulations" are framed, the valuations may vary ten or twenty per cent., or more. This is illustrated to our hand in the circulars to collectors, now before us, from the Treasury Department.

In that of the 23d of June, the appraisers are directed to determine the home values, with just reference "to the prices obtained at cash sales, in the fair and regular course of trade." Of course "the prices obtained at cash sales" would be such, ordinarily, as would cover all costs, profits, and charges, *including the duty*. Thus, if a bale of cloth would sell for six dollars a yard—if that would be "the price obtained at cash sales"—then that must be the custom-house value, and the duty must be assessed upon it—twenty per cent. on six dollars, or on one yard of cloth would be one dollar and twenty cents.

But in the circular of the 1st of July a different "regulation" is prescribed. Here the appraiser is directed to report the value, not according to the price obtained at cash sales, but "at a rate or sum which, with 20 per cent. added thereto, will amount to said price." Thus, if the price of a bale of cloth would be six dollars a yard, the instruction is, that "the appraiser should report the value thereof to be *five* dollars per yard, because this rate, with 20 per cent. added, would produce six dollars, the ascertained market value of said cloth." Well, 20 per cent. on five dollars, or on one yard of the same cloth as before, would be one dollar, and the difference

to the importer in the same 20 per cent. duty on one yard of the same cloth is the difference between one dollar and one dollar and twenty cents, according to the "regulations" prescribed for fixing the rule of home valuations.

These "regulations," then, are matter of substance, directly and largely affecting the rate and amount of duties to be paid; and they *should* be prescribed by authority of law. The act before us provides that duties should be assessed upon the home value of imports, "under such regulations as may be prescribed by law." From and after June, 1842, duties shall be assessed on a home valuation; that valuation shall be made under regulations to be prescribed; and those regulations must be prescribed by law. All this would seem to be plain enough; and as no regulations have been prescribed by law, so no valuations can be made under regulations prescribed by law, and no duties can be assessed upon any such valuations—the only valuations upon which duties can be assessed.

But here it has been said, that the act is not imperative, requiring that the regulations *shall* be prescribed by law, but only that they *may* be. It is plain, however, that the rule of home valuations is imperative; that that rule is incapable of execution without regulations; and that regulations cannot be prescribed but by law. The act meant that regulations should be prescribed by law, or not at all. "*May*," says the Attorney General, "implies discretion to do or not to do;" which is very true; but it does not follow, if the Legislature, in its discretion, sees fit not to prescribe these regulations, or fails to do so, that any body else can.

It has been suggested and argued, however, that the Secretary of the Treasury has authority, by the act of 1832, "to establish rules and regulations" for the appraisal of imports; and that regulations, therefore, established by him would be "regulations prescribed by law."

But the rule of valuations, under the act of 1832, was that of ascertaining the actual value of imports "*at the time purchased and place from which the same shall have been imported*," &c.; it was the rule of foreign valuations; and his authority to make regulations was explicitly to ascertain the value by *that rule*. Now, that rule was superseded and abolished by the act of 1833, as applicable to duties after June, 1842; a new rule of valuation was established, wholly different from the other, and inconsistent with it. The former rule had no existence after June, 1842; and how could an authority to the Secretary to make regulations for executing that rule survive the rule itself? Above all, how could it survive in such a manner as to be applicable to a new rule of valuation, of a totally different character? The act of 1833, moreover, contains a clause *repealing*, in terms, whatever was contained in the act of 1832, or any other act inconsistent with that act. Nothing could be more inconsistent with the rule of foreign valuations than the rule of home valuations; certainly nothing more inconsistent than foreign valuations under regulations prescribed by the Secretary of the Treasury, with home valuations under regulations to be prescribed by law.

It is remarkable, too, that the history of the act of 1832 condemns the forced construction which would authorize the Secretary of the Treasury, or the Executive, to prescribe regulations for the home valuations, and strongly rebukes the exercise of so unwarrantable a power.

When the bill was under consideration in the Senate, and the amendment providing for home valuations was proposed, a motion was made by

a Senator (Mr. Dickerson, of New Jersey) to strike out the word "law" from the phrase "prescribed by law," and insert "the Secretary of the Treasury, with the approbation of the President of the United States." This was strongly opposed, and promptly rejected. The mover of the bill (Mr. Clay) declared that the object of his proposition was, "*to leave it to a future Congress to act, in detail, on the principle of the amendment*," that is to say, on the principle of home valuations; and "he doubted their constitutional power to refer such a duty to the President and his Secretary." Another Senator (Mr. Clayton) said "he would not give the power of regulating the valuation to the President and his Secretary; for, if they should be opposed to protection, it was giving them too much power over the principle." (Register of Debates, vol. 9, part 1, pp. 711 to 713.)

After all this, that the Executive should attempt to prescribe regulations for home valuations, to seize the "power over the principle," as if, in fact, the word "law" had been stricken out, and "the President and Secretary" inserted, is an act which demands cogent reasons to justify.

There is a manifest and wide difference between the power which the Executive Government has *assumed* to exercise in this case, and that which was exercised, by express authority of law, in regard to appraisals under foreign valuations. In the latter case, the discretion was limited within very precise bounds; and it is scarcely conceivable that any regulations could have been framed which could have made the valuations, or the rate per cent. of duty assessed on them, greater or less, or any way variant, from the valuations or rate prescribed by the statute itself. The value in this case to be ascertained was in fact *the cost*, and had no reference to mere market price. For this purpose, the invoice was used as the foundation of the estimate—of course to be rejected if fraudulent, but not otherwise. And whether there was an invoice or not, or whether used or not, the statute itself explicitly prescribed that "*the cost*" should be taken as the foundation of appraisement, and then directed also that "*to the cost* should be added all charges except insurance." And here were *all* the elements entering into the valuations explicitly prescribed by law. Nothing was left to Executive discretion; and the "regulations" which the Executive was authorized to prescribe were to carry these plain directions of the statute into effect.

It is a very different matter, certainly, when the Executive undertakes to prescribe "regulations," in the first place, wholly without direction or warrant of law, and then, in a case where, *ex necessitate*, the amount of duties to be paid on all imports depends essentially on these very regulations; where the question may be, whether importers shall pay one-fifth, or only one-sixth, of the actual price and value of their imports in the market, into the Treasury—a question which the Executive, through the Secretary of the Treasury, has, in the very instance before us, undertaken to decide, and has decided, as we have seen, at one time in one way, and at another time in another way!—it is not the least alarming feature in this case that the Executive has, upon deliberation, consultation, and advice, come to the voluntary exercise of so monstrous and dangerous an authority, through his own act, in the use of the highest prerogative power of the Constitution, by placing his negative on a provisional and temporary bill passed by Congress to meet and obviate the very difficulty and condition we have now encountered. A necessary act of legislation by

Congress was negatived by the President; and, simultaneously with this, a course of executive legislation was entered upon—a legislation touching the interests of the people in the most important particular in which their interests can be affected by legislation—namely, in the matter of revenue and taxation.

On this part of the case, as a question of legal construction, the committee can come to no other conclusion than that no duties whatever are collectable under the act of 1833, inasmuch as duties must be assessed, if at all, by that act, on the principle of a home valuation, under regulations prescribed by law; and because, no regulations having been so prescribed, the principle of the home valuation has not been ascertained and defined. No duties can be assessed upon it.

If the conclusion here stated is correct, it applies with equal force to the duties imposed by the act of September 11, 1841, "relating to duties and drawbacks." Duties of 20 per cent. ad valorem on certain articles are imposed by that act; but, by the act of 1833, all duties, from and after the 30th of June, 1842, must be assessed, if at all, on the principle of a home valuation; and as they cannot, for want of regulations prescribed by law, be assessed on that principle, they cannot be assessed or collected at all.

The committee are sensible into what an unprecedented, unhappy, and hazardous condition the country is thrown, if it be true, as they believe it is, that no duties whatever are now collectable by law, or have been since the first of the present month. It is a new and untried state for the republic. A Government without revenue is a Government on the verge of dishonor and of anarchy. It is an experiment which never should have been tried with us; a doubt even, although a slight doubt, in regard to the condition in which the revenue laws would be left, should have been enough. No act can be justified which lightly puts at hazard the credit and the integrity of the nation. If the President could have signed the provisonal bill which was passed by Congress to meet this very exigency—a bill which it is believed was as harmless as it was necessary—this disgrace and calamity would have been avoided. He returned it, however, with objections, and the country will judge of them. That bill failed to become a law. And before it was finally disposed of, on the return of the bill, the first of July had come and gone, and the Government was without revenue, and without any law for collecting revenue.

In this state of things, it remains for Congress to proceed to digest and pass a general and permanent tariff law with as little delay as possible. Such a measure was, at the time, already before the House and in progress, and might be matured and passed with not much more delay than would probably be encountered by any new attempt to pass a provisional bill. This measure is now believed to be on the eve of being matured and finished, and it may be confidently expected that, in a very few days more, it will be before the President for his signature. With a new and properly digested tariff measure, reviving once more a judicious, practical, and effective system of duties on imports, it is hoped that the wound which has been inflicted on the national credit and character may be healed, the distracted and perilous tendencies of our affairs be corrected, and the honor and prosperity of the country eventually restored.

While, therefore, the committee would propose no measure to impede the progress of the general tariff bill, or to act even provisionally as a substitute for it, they yet think it desirable, and only just to the Treasury, and to

all interests involved in the subject, that the importations which have been made into the United States since the 30th of June last, and which may be made before any proper tariff bill shall be matured and become a law, should not be suffered wholly to escape the payment of customary duties. The act of 1833 contemplated and declared that duties *should be laid* on these importations. We think a law may be passed to meet and cover the case, to which no constitutional or other sound objection can be made; and we propose a bill to lay a duty, or tax, not exceeding 20 per centum ad valorem, on imports coming into the country during the period of the interregnum of the general laws imposing duties on imports. It is supposed that duties will continue to be exacted on imports, under the authority and instructions of the Executive Government, as if the laws were still in force for that purpose; either the goods will be seized by the collectors, and remain in custody, or the duties exacted will be paid under protest. It will be easy, therefore, to reach the property or the importers, so as to enforce the duty or tax proposed by this bill. The bill may be taken up, considered, and passed, if it should meet the approbation of the House, after the general tariff bill has been disposed of, or at any time during the remainder of the session, at the convenience of the House. The introduction of the bill will be a notice to the country that free importations are not to be allowed, even for a single day, notwithstanding a temporary defect or failure in the general revenue laws may have occurred; and when passed, it cannot fail, in a great measure, to quiet the doubts, the agitations, and just alarm, prevailing throughout the country on this subject, and to compose the unhappy litigations which have sprung up and are springing up every where on account of the state of our own laws—withdrawing at once from the courts an immense mass of legal controversy, in which the Government and its officers are arrayed on one side, and resisting citizens on the other.

The committee ask leave to introduce a bill.